

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1336-A

IN THE MATTER OF:

Application of EXECUTIVE LIMOUSINE)	Served July 1, 1974
SERVICE, INC., for a Certificate of)	
Public Convenience and Necessity to)	Application No. 805
Operate Between Dulles International)	
Airport and Washington, D. C.)	Docket No. 262

STRATTON, Commissioner, concurs.

I join in this order believing it appropriate that we issue a certificate of public convenience and necessity to the applicant for the services described. However, I would have conditioned this certificate by a proviso that it would be self-canceling upon the termination or nonrenewal of the carrier's concessionaire contract with the Bureau of National Capital Airports (FAA). My reasons for this lie in the probability that the transportation services that we certificate herein will be interrupted if the potential for conflict between the statutory governance of this Commission and of the FAA materializes.

This Commission has general authority to regulate transportation in the Metropolitan District, including the airports, and specifically the Dulles International Airport. The FAA's Bureau of National Capital Airports is under statutory admonition to operate these airports as a self-sustaining enterprise. Part and parcel of the FAA's effort in this direction is to franchise the various commercial enterprises at the airport on a basis that returns revenues to the FAA. This franchising effort has been extended to the ground transportation industry and is conducted pursuant to a typical set of procurement laws and regulations. Among other things, these laws require award of the franchise to the bidder who promises the most advantageous financial arrangement for the government. To protect the franchisee's rights, it follows that the FAA would assert and seek to exercise the authority to prohibit a nonfranchised carrier from originating transportation at the airports.

Therein lies the potential for conflict. A successful franchise bidder might not qualify for certification by this Commission, or a certificated carrier might not qualify for award of a franchise. Or -- to move to the

instant case -- this franchised applicant, after some period of operation pursuant to the certificate issued herein, could lose its FAA franchise either for cause or by award to a successor. In that event the FAA would probably try to prohibit the still certificated carrier from operating at the airport. On the other hand, a substitute carrier, even one properly franchised by the FAA, could not operate without authority from this Commission. That authority could only be granted after proceedings mandated by our Compact. Those proceedings take time, and during that time no legally permissible transportation could be offered to the riding public.

It is the prospect of a lapse in service with which I am deeply concerned. I would tailor the certificate in this case to the realities of the FAA's procurement practices, terminating the certificate automatically when the carrier is no longer "able" to operate because its franchise has expired. If the carrier's rights under its certificate end simultaneously with the end of its franchise, then this Commission can more expeditiously certificate a carrier to provide the transportation which we have found necessary and convenient for the public.

This is not to say, however, that I believe our authority to regulate transportation is subordinate to the FAA's franchise functions. To the contrary, I believe we could, pursuant to the Compact, certificate a non-franchised carrier to perform transportation to and from the airports operated by the FAA. My point is only that we ought not precipitate this test of conflicting governmental authority by awarding a "permanent" certificate. An automatically terminating certificate would permit us to look at the matter afresh -- unhindered by the requirement to consider extinguishing property rights of this carrier at the same time.